IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.5266 OF 2006

Shri Vivek Arvind Marathe : Petitioner

versus

Shri Ajit Arvind Marathe : Respondent.

Mr.A.G.Damle for the petitioner.

Mr.R.M.Pethe for the respondent.

CORAM : D.G.DESHPANDE

DATED : JANUARY 12, 2007.

P.C.

1. This petition is filed at the instance of the original defendant in a suit filed by the plaintiff/respondent. The defendant raised objection by filing application before the trial court on the basis of clause 20 of the Partnership Deed. The said clause reads thus :-

> "In case of dispute or difference of opinion between the parties hereto

> touching the management, day today working and accounts, dissolution terms, dissolution accounts or liability of any of the partners or to one another or other articles of this partnership during its continuation or on dissolution or thereafter, the same shall be referred to the arbitration of the two persons, one to be appointed by each partners. The said two Arbitrators may appoint an umpire. The award of the said Arbitrators or the Umpire shall be binding on the parties hereto. The Arbitrators shall have summary powers to proceed with the Arbitration. The provision of the Arbitration Act, 1940 or any statutory modification in that, for time being, in force, shall apply to such Arbitration."

The trial Court allowed that application filed by the petitioner/defendant and directed to refer their dispute to the arbitrator. But on appeal, the District Court, Pune set aside that order by its order dated 24.4.2006. That is the order which is challenged in the present petition.

2. Heard. I have perused the impugned order. The reasons given by the District Court are not proper when the partnership deed itself provides appointment of arbitrator and it covers contingencies, then merely because the account can be settled by Court Commissioner, the District Court was not justified in setting aside the order of trial Court. Therefore, by consent of parties, the petition is admitted and finally heard.

3. The impugned order is set aside. The District Judge to appoint Charter Accountant as Arbitrator. The Charter Accountant, so to be appointed, should not be in any way concerned with either of the parties in the past and the dispute between parties should be referred to the said arbitrator and it should be decided within a period of six months from the date of his appointment. Costs of the arbitrator to be borne equally by both the parties. Both the parties to give full cooperation to the arbitrator. Petition is disposed of.

[D.G.DESHPANDE,J]